



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

[DATE]

**This memo can be used to brief both the RA (from Jeff Scott) and the AA (from Susan Bromm)**

**Memorandum**

**Subject:** Proposed referral to the Council on Environmental Quality of the U.S. Forest Service's Environmental Impact Statement for the Rosemont Mine, Arizona

**From:** Jeff Scott, Director, Communities and Ecosystems Division and Waste Division

**To:** Jared Blumenfeld, Regional Administrator

**Purpose of this Briefing:** To determine your support for a referral of this project to CEQ, and to discuss options for next steps. CEQ's regulations require that a referral be submitted no later than 25 days after the notice of availability of the Final EIS. The Rosemont Mine Final EIS was published on [DATE]; therefore, [DATE] is the deadline for referring the matter to CEQ.

**Background:** The Rosemont Copper Mine, a proposed new open pit mine, would be located on 4,750 acres of predominantly Coronado National Forest lands and within the Cienega Creek watershed, which contains regionally rare, largely intact mosaics of some of the highest quality stream and wetland ecosystems in Arizona. The proposed project would eliminate 42.5 acres (18 linear miles) of desert streams and most of the ecological functions and services attributed to the project watershed area, and result in persistent degradation of habitat for ten federally listed species. Ensuing indirect impacts to hundreds of acres of seep, spring and riparian habitats from groundwater drawdown would occur on a watershed scale, conservatively estimated at 40,000 to 60,000 acres. In addition, the project would degrade State-designated downstream "Outstanding Arizona Waters" subject to Clean Water Act §303 Tier 3 "anti-degradation" water quality standards, have significant adverse impacts on tribal and environmental justice communities, and degrade regional visibility and increase airborne nitrogen in Saguaro National Park (a Class 1 area) -- statutory exceedences which could negate the benefits of costly nearby generating facility retrofits EPA recently required to reduce visibility impacts.

The Forest Service is the federal lead agency, and the Army Corps of Engineers is a cooperating agency seeking to adopt the Forest Service's Record of Decision for its CWA §404 permit decision. On February 21, 2012, EPA rated the Draft EIS "EU-3."

**Basis for Referral:** Agencies considering referral of a project to CEQ are directed by CEQ's NEPA implementation regulations at 40 CFR 1504.2 to weigh potential adverse environmental impacts, considering:

- (a) Possible violation of national environmental standards or policies.
- (b) Severity.
- (c) Geographical scope.
- (d) Duration.
- (e) Importance as precedents.
- (f) Availability of environmentally preferable alternatives.

Based on EPA's careful review of project information, we find that the proposed project is environmentally unsatisfactory for the following reasons:

- The project would result in significant degradation of waters of the United States in violation of 40 CFR 230.10(b), (c) and (d) of the *Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials* ("Guidelines"). (40 CFR 1504.2 (a))
- Impacts from the proposed project include direct fill and secondary impacts which would result in the loss, conversion and functional degradation of aquatic, wetland and terrestrial habitats on a watershed scale. (40 CFR 1504.2 (c))
- Inadequate mitigation has been proposed for compensation for the impacts of the direct fill of 39.97 acres of waters. (40 CFR 1504.2 (a))
- Secondary impacts to surface waters have not been fully assessed, as required under the Guidelines, for the proposed project: 1) upstream of the mine; 2) downstream of the mine beyond the confluence of Davidson Canyon and Cienega Creek; and 3) from groundwater drawdown in the watershed. In addition, no mitigation is presently proposed for these impacts. (40 CFR 1504.2 (a))
- The project would adversely affect three types of Special Aquatic Sites (wetlands, sanctuaries and refuges, and riffle and pool complexes (see 40 CFR 230.40-45), as well as Tier 3 "unique waters" because portions of Davidson Canyon Wash and Cienega Creek are designated by the State of Arizona as "Outstanding Arizona Waters" (see CWA §303 and 40 CFR 131.12). In addition, EPA identified these waters as "Aquatic Resources of National Importance" pursuant to the 404(q) Memorandum of Agreement. (40 CFR 1504.2 (b))
- The project would exacerbate a trend of decreasing surface water availability in the watershed and contribute to the continued loss of function and value of these rare desert waters. The cumulative effect of this may be the destruction of these sensitive resources. (40 CFR Sec. 1504.2 (b), (e))
- The impacts associated with direct and indirect loss of waters of the U.S. would endure for hundreds of years in some cases and in perpetuity for others. (40 CFR 1504.2 (d))
- The Corps, Forest Service, applicant, and EPA have pursued numerous avenues for identifying environmentally preferable alternatives. No feasible alternative significantly reduces the above noted impacts without equal or greater offsetting environmental harm. (40 CFR 1504.2 (f))

**Agency Coordination:** Region 9 has worked closely with the Forest Service and Corps to try to resolve our differences at every stage of the NEPA process [discuss attempts to resolve...]

**Positions of Interested Parties:**

- Forest Service: .....

- Corps of Engineers:.....
- Bureau of Land Management: Dewatering of the mine would dry up the Las Cienegas National Conservation Area (NCA) and Pima County's Cienega Creek Natural Preserve, resulting in a widespread adverse impacts to the functioning and services of its aquatic environment and a likely violation of water quality standards. Congress and the President designated the NCA as part of BLM's National Landscape Conservation System, which was established to protect some of the most remarkable public lands in the American West. BLM has expressed grave concerns about the mine's likely impacts to the NCA.
- U.S. Fish and Wildlife Service and Arizona Game and Fish.....
- Tohono O'odham Nation: The Nation is vehemently opposed to the proposed mine, which would result in the loss of 111 National Register of Historic Places eligible properties, approximately one third of which are known or likely to have human remains.
- Congressional reps.....
- ADEQ.....
- Pima County: The mitigation proposal depends on water supplies that may not be available. The challenges to success at the site are substantial enough that Pima County, a sponsor of the proposed mitigation project, has refused to assume full responsibility for the project's success, as would be required by regulation if used for Rosemont's impacts.
- Environmental Groups.....

#### **Recommendations for Resolution of Issues:**

- 1.
- 2.
- 3.

Another option is to send a Final EIS comment letter with our strong objections to the project and advising the Forest Service that we intend to veto 404 permit????..... Our Final EIS comment letter would likely be used by environmental groups in litigation against this project.